

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-606

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA, and ROBERT BATINOVICH,
VERNON L. STURGEON, RICHARD D. GRAVELLE,
CLAIRE T. DEDRICK, and WILLIAM SYMONS, JR.,
the members of said Public Utilities Commission, et al.,
Respondents.

No. 78-607

GENERAL TELEPHONE COMPANY OF CALIFORNIA,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the
Supreme Court of the State of California

**OBJECTION TO MOTIONS FOR LEAVE TO FILE
A BRIEF AMICUS CURIAE AND TO
MEMORANDUM FOR THE UNITED STATES
AS AMICUS CURIAE**

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The Respondent California Public Utilities Commission (Commission) has received copies of motions for leave to file a brief *amicus curiae* in one or both of these proceedings from Edison Electric Institute, Southern Company, Communications Workers of America, Sierra Pacific

Power Company, Kansas City Power & Light Company and the California Independent Telephone Association and a copy of the memorandum for the United States as *amicus curiae*.

Pursuant to Rule 42.3 the Commission hereby objects to the granting of said motions, and to any others which may yet be filed, for the following reasons:

1. The judgment below is one affecting only the two petitioners and is not binding upon a court of any other state nor upon any other regulatory commission. Therefore, it does not raise a federal question of national significance.
2. The Commission's ratemaking conclusions were made in direct response to a remand order of the California Supreme Court which had earlier found that it was an imprudent act for a utility not to adopt accelerated depreciation when available. (*City and County of San Francisco v. Public Utilities Commission*, 6 C.3d. 119, Resp. App. A at page 12 RA). Both petitioners herein had refused to do so prior to 1970.

None of the movants claim to be in the same or a similar position as the petitioners in that respect. It is difficult to see how a decision founded on such a unique set of facts could be extended to other, out-of-state utilities. Therefore, the movants lack a real interest in these proceedings.

3. With respect to the memorandum for the United States, this was not timely filed. It was received by

the Commission on the day the Commission's own brief in opposition was filed with this Court.

It was, therefore, not possible to respond thereto in that brief. However, that memorandum is an additional example of the inconsistent positions taken by federal agencies with respect to tax eligibility. Those inconsistencies are specified on pages 12, 13 and 14 of said brief in opposition. As such, the memorandum adds weight to the Commission's conclusion that all parties would benefit if this Court would hear and decide the issue of tax eligibility in favor of the Commission now.

CONCLUSION

The motions for leave to file a brief *amicus curiae* should be denied. The memorandum for the United States as *amicus curiae* should be rejected.

Respectfully submitted,

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